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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,654	08/01/2003	Steve H. Balanchi	1317	3543

7590 04/29/2004

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EXAMINER

MILLER, BENA B

ART UNIT	PAPER NUMBER
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3712

DATE MAILED: 04/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/632,654

Applicant(s)

BALANCHI, STEVE H.

Examiner

Bena Miller

Art Unit

3712

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.

- 5) ☐ Notice of Informal Patent Application (PTO-152)

- 6) ☒ Other: **NO COPY OF FOREIGN PATENT DOCUMENT HAS BEEN RECEIVED BY APPLICANT**

## **DETAILED ACTION**

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-18 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-12 of U.S. Patent No. 6,626,727. Although the conflicting claims are not identical, the claims recite most of the elements of the patented claims except for the features of the magnetizable body. On the other hand, it would have been obvious to delete some of the features of the magnetizable body in the patent for the purpose of making the improved magnetic construction toy more economical to produce.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, 6, 7, 9, 11, 12, 14-16 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Dreiding (US Patent # 4,020,566).

Regarding claims 1 and 11, Dreiding teaches in figures 1, 16 and 17 a magnetizable body (25), a construction member having a hub portion (20) and multiplicity of connecting arms (22a-22c), the connecting arms have a first end and second portion (fig. 1), and a permanent magnet captively carried (98).

Regarding claims 2 and 12, Dreiding further teaches the connecting arms has a peripheral surface that is radially symmetrical with respect to the symmetrical axis in planes orthogonally intersecting the symmetrical axis (fig.1).

Regarding claims 4, 9, 14 and 18, Dreiding further teaches an one hundred twenty degrees axis of symmetry (fig.1).

Regarding claim 6 and 10, the examiner takes the position that device of Dreiding is tapered (fig.1)

Regarding claims 7 and 16, Dreiding further teaches the connecting arm has a peripheral surface intermediate the second portion and the first end of the connecting arm that is a surface of revolution with respect to said symmetrical axis (fig.1).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 8, 13 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dreiding (US Patent # 4,020,566).

Regarding claims 3, 8, 13 and 17, Dreiding teaches in figures 1, 16 and 17 most of the elements of the claimed invention. However, Dreiding fails to teach a ninety degrees axis of symmetry. Dreiding teaches in col. 5, par. 1 that the number of connector arms is governed by the atom or possibly atom complex to be represented by the relevant building element. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have a ninety degrees axis of symmetry for the toy of Dreiding for the purpose of forming different simulations of a chemical compound(s).

Claims 5 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dreiding (US Patent # 4,020,566) in view of Dreiding (US Patent # 4,030,209).

Regarding claims 5 and 10, Dreiding ('566) fails to teach a spherically shaped magnetizable body. Dreiding ('209) teaches molecular models including structural elements having a center (102,103) with six connector arms (31a-31f) connected thereto. The each connector arm has a sphere (D, E, F) disposed at the end thereof. The structural elements are joined to each other to form a stereo chemical model. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a spherically shaped magnetizable body as taught by Dreiding ('209) for the toy of Dreiding ('566) for the purpose of forming a stereo chemical model.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Plimpton teaches a magnetic apparatus. Yonkers teaches an education device. Haaland teaches a game board with means for preplacing playing pieces. Hooper teaches a magnetic assembly toy.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bena Miller whose telephone number is 703.305.0643. The examiner can normally be reached on Monday-Friday.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Bena Miller  
Examiner  
Art Unit 3712

bbm  
April 27, 2004